IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 11828 of 2007
Date of decision 3 . 8 .2007

Surinder Singh .. petitioner

Versus

State of Haryana and others .. Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

PRESENT: Mr.A.S.Virk, Advocate for the petitioner

M.M.Kumar, J.

This petition filed under Article 226 of the Constitution prays for quashing order dated 18.8.2006 (Annexure P.2) passed by the Collector cum Deputy Excise and Taxation Commissioner (Excise),Ambala and also order dated 30.5.2007 (Annexure P.4) passed by the Excise and Taxation Commissioner, Haryana. The petitioner is admittedly owner of vehicle Eicher-Gallaxy 3025. He availed loan for financing of the vehicle. The detective staff, intercepted the vehicle with 270 cases of Indian made foreign liquor (3240 bottles). The liquor was recovered when the vehicle was being driven by one Ramesh Kumar son of Ram Yagya r/o village Gouripur, PS Sitapur, District Sitapur. Respondent no.3 passed an order on 18.8.2006 under Section 61(1)(i) of the Punjab Excise Act, as applicable to Haryana (for brevity 'the Act') imposing a penalty of Rs.9,72,000/-. It is appropriate to mention that the liquor in question was confiscated on the day of checking i.e. 8.7.2006 and the vehicle was detained. Notice was issued to the offender/ owner of the vehicle for 18.7.2006 . When no one appeared, again a notice was issued through registered post as well as through special messenger for 1.8.2006. The notices were received back

undelivered with the remarks that no such person resides at the given address. Finally notices were published in Hindi Daily, Punjab Kesri and Financial World, Chandigarh edition for 7.8.2006 asking the offender/ owner to appear within ten days of the publication of the notice. Again no one attended. Accordingly, the matter was decided ex-parte. The liquor recovered was confiscated and penalty of Rs. 9,72,000/- was imposed by placing reliance on Section 61(1)(i) of the Act. The vehicle was ordered to be released to the owner (petitioner) after realisation of the penalty. On appeal, filed before the Excise and Taxation Commissioner, Haryana the order passed by the Collector -cum Deputy Excise and Taxation Commissioner, Ambala has been upheld vide impugned judgement dated 30.5.2007 (Annexure P.4) holding that the Collector cum Deputy Excise and Taxation Commissioner, Ambala has adopted proper procedure for imposing penalty as full opportunity was granted to the petitioner. The penalty of Rs. 300/- per bottle has also not been held to be excessive because such offences entails smuggling of unauthorised liquor with the purpose of evasion of excise duty which have to be dealt with in a stringent manner.

We have heard learned counsel for the petitioner at a considerable length and express our inability to accept that there was any procedural lapse committed by respondent nos. 2 and 3 while passing the impugned order. No legal infirmity warranting interference of this Court in exercise of writ jurisdiction under Article 226 of the Constitution has been pointed out. All that has been said is that the petitioner being owner of the vehicle was entitled to notice before imposition of any penalty in terms of Section 61(1)(aaa) of the Act. For the afore-mentioned proposition, the

petitioner has placed reliance on a Division Bench judgement of this Court in the case of Kotak Mahindra Bank v. State of Haryana and others Civil Writ Petition 4749 of 2005 decided on 20.7.2005. However, there is nothing in the judgement of the Division Bench which may come to the rescue of the petitioner because the principles of natural justice in the instant case have been duly complied with. Firstly, notices by ordinary process and then by registered post were issued which were returned back with the remarks that no one resides at the given address. Thereafter notices were published in Hindi Daily, Punjab Kesri and Financial World, Chandigarh edition. It was thereafter that the Deputy Excise and Taxation Commissioner, Ambala passed an order on 18.8.2006. Therefore, it cannot be complained that the principles of natural justice have not been followed. Moreover, the petitioner has not been able to show any mitigating circumstance before the Excise and Taxation Commissioner, Haryana to take a different view than the one taken by the Deputy Excise and Taxation Commissioner. There is thus no merit in the petition and the same is accordingly dismissed.

(M.M.Kumar)
Judge

(Ajay Kumar Mittal)
Judge

3.8.2007
okg